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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the Child
on involvement of children
in armed conflicts
Sixth session
Geneva, 10-21 January 2000

Report of the Chairperson of the working group, prepared pursuant to Commission resolution 1999/80

Introduction

1. In paragraph 15 (g) of its resolution 1999/80 of 30 April 1999, entitled "Rights of the Child", the Commission on Human Rights reaffirmed the urgent need to raise the current minimum age limit set by article 38 of the Convention on the Rights of the Child on the recruitment and participation of any person in armed conflicts with the aim of reaching a higher standard of protection of children and of coming to an early conclusion of the work of the working group on a draft optional protocol on the involvement of children in armed conflict, especially in view of the tenth anniversary of the entry into force of the Convention.

2. In paragraph 16 of that resolution the Commission called upon all States (a) and other parties to armed conflict to respect fully international humanitarian law and, in that regard, called upon States parties to respect fully the provisions of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977, while bearing in mind resolution 2 of the twenty-sixth International Conference of the Red Cross and Red Crescent of 1995 entitled "Protection of the civil population in period of armed conflict", and to respect the provisions of

the Convention on the Rights of the Child which accord children affected by armed conflict special protection and treatment, (b) and other parties to armed conflict to end the use of children as soldiers and ensure their demobilization, and to implement effective measures for the rehabilitation and reintegration into society of child soldiers and combatants, child victims in cases of armed conflict or foreign occupation, and invited the international community to assist in that endeavour.

3. In paragraph 17 (a) of the same resolution the Commission decided, with regard to the draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts to invite the Chairperson of the working group to continue broad informal consultations, with the aim of promoting an early agreement on the optional protocol, and, if possible, to produce a report thereon by the end of 1999, including recommendations on how to finalize the formal negotiations.

4. In paragraph 17 (b) and (c) of resolution 1999/80 the Commission requested the working group to meet early in 2000 in order to make further progress with the aim of finalizing its work before the tenth anniversary of the entry into force of the Convention, and on the Rights of the Child, and to report to the Commission at its fifty-sixth session. The Secretary-General was requested to give the necessary support to the working group to meet for a maximum of two weeks and to transmit the report of the working group to relevant recipients and to invite their comments. The Committee on the Rights of the Child, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies were invited to consider being represented and the Special Representative of the Secretary-General on children in armed conflict to consider being present at the next session of the working group.

I. REVIEW OF CONSULTATIONS

5. In pursuance of her recommendations to the working group at its fifth session as endorsed by the Commission on Human Rights, the Chairperson has since conducted broad informal consultations with Governments, United Nations bodies and specialized agencies, international and regional organizations and non-governmental organizations (NGOs). Her ambition has been a transparent and fair multilateral process.

6. The Chairperson has organized open-ended pre-sessional consultative meetings on several occasions in New York and in Geneva and has made herself available for bilateral consultations.

7. Her consultations with all regional groups, as well as with individual Member States, United Nations agencies and NGOs in June 1999 in Geneva dealt with a number of options for the continued work of the working group, which the Chairperson put forward as conclusions of her earlier consultations. The options concerned the age limit and ways to finalize the optional protocol.

8. The alternative options presented were: (a) a minimum age of 18 years both for participation in hostilities and for enforced and voluntary recruitment into armed forces, (b) a minimum age of 18 years for participation in hostilities and of 17 years for voluntary recruitment into armed forces, or (c) a minimum age of 18 years for participation in hostilities only. They also contained proposals that the questions of non-State actors and international-internal conflicts be addressed.

9. With regard to finalizing the optional protocol the options presented were by: (a) full consensus, (b) silent consensus, (c) an opt-in/opt-out clause with regard to voluntary recruitment, or (d) voting. "Reservation" was put within brackets in order to indicate that it was not considered an appropriate option in an optional protocol. The options were presented as representing the Chairperson's bottom line. Finally, the Chairperson asked for comments on possible consequences of a failure to reach an agreement.

10. The chairperson endeavoured to keep in close contact especially with the Committee on the Rights of the Child, the High Commissioner for Human Rights, the Special Representative of the Secretary-General on children in armed conflict, UNICEF and with NGOs.

11. The Chairperson accompanied the High Commissioner for Human Rights on her visit to Sierra Leone and participated in the Organization of African Unity Summit in Algiers. She also accompanied the Special Representative of the Secretary-General on children in armed conflict on his visit to Colombia. These visits offered valuable opportunities to discuss the political, legal and practical problems in affected areas, as well as requirements for concrete action at the international, regional and national levels.

12. The Chairperson accompanied the Minister for Foreign Affairs of Sweden to the European Conference in Berlin on the use of children as soldiers, organized by the NGO International Coalition to stop the Use of Child Soldiers and hosted by the Government of Germany. She participated in numerous events commemorating the tenth anniversary of the Convention on the Rights of the Child, inter alia organized by the Committee on the Rights of the Child in Geneva and during the fifty-fourth session of the General Assembly. On a regular basis she used international regional and bilateral meetings and visits as opportunities for information exchange and consultations regarding the working group, among others the ILO Conference on the Worst Forms of Child Labour, the Human Dimension Review Conferences of the Organization of Security and Co-operation in Europe, held in Vienna and Istanbul, as well as the 27th International Conference of the Red Cross and Red Crescent.

II. RECOMMENDATIONS TO THE WORKING GROUP

13. In her consultations, the Chairperson was yet again able to discern a genuine desire in the international community to strengthen the international standards for the protection of children in armed conflict, in particular by raising the minimum age for recruitment into armed forces and participation in hostilities. However, the need to include solutions to other issues also, such as non-State actors, compliance, military schools and international cooperation, was also stressed. It was proposed that it might be suitable to start off with those issues in order to stress their importance and usefulness for finalizing the optional protocol.

14. The Chairperson noted an increased awareness of the phenomenon of the use of children in armed conflict and a strong commitment to combating it through a number of activities advocating strengthened legal protection, as well as practical action to help children in need. The risk has been highlighted that failure to finalize the optional protocol will continue to stand in the way of necessary action on the ground.

15. The Chairperson recognized a sense of urgency and general support for finalizing the draft optional protocol at the forthcoming session of the working group, and also with regard to the working group fulfilling its assignment before the special session of the General Assembly to be held in 2001 and its review of the implementation of the Convention on the Rights of the Child.

16. In pursuance of the invitation by the Commission on Human Rights to the Chairperson to present recommendations on how to finalize the formal negotiations, and based upon her consultations, the Chairperson wishes to offer the following recommendations to the working group. The comments on her June alternative options have allowed her to narrow down her perception of the majority's positions with regard to the central issues of the optional protocol.

17. The Chairperson has found that the former Chairman's perception paper, contained in annex II to the report of the working group on its fourth session (E/CN.4/1998/102) is generally considered to reflect the views and positions of a majority of the participants at the fourth session of the working group. She therefore wishes to recommend that this document be used as the basis for the negotiations on the final text of the optional protocol at the working group's sixth session.

18. However, taking into account that developments since the text was presented two years ago require some strengthening of the text, the Chairperson proposes that the optional protocol should clearly address:

> The setting of a minimum age of 18 years for participation in hostilities, 18 years for enforced and compulsory recruitment into armed forces and 18 years for voluntary recruitment, with an opt-out provision allowing for a minimum age of 17 years with reference to national legislation;
>
> The issues of non-State parties, compliance, surveillance and military schools (preferably to be dealt with by the working group at the beginning of its session);
>
> The need for international cooperation and commitment in strengthening the international standards for protection of children, and their implementation, in parallel with increased practical activities for the protection, demobilization and reintegration of affected children.

19. It is the Chairperson's perception that a majority supports the optional protocol being finalized at the January 2000 session of the working group and by consensus.